

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-216583

DATE: October 11, 1984

MATTER OF: Intex Insulating Company

DIGEST:

1. Bid of small business bidder who submits bid bond naming large business as principal is nonresponsive because bid bond does not protect government's interests.
2. Prior improper awards based on bids offering defective bid bonds do not justify repetition of error of accepting nonresponsive bid for award.

Intex Insulating Company (Intex) protests the rejection of its bid on invitation for bids (IFB) No. F49642-84-B0376, issued by Andrews Air Force Base (Air Force), Washington, D.C. Intex states that because it is a small business, it had a large business obtain the bid bond for this solicitation in the large business' name, which Intex then submitted with its bid. The Air Force rejected the bid as nonresponsive due to the difference in names on the bid and on the bond.

Our Office has consistently held that a bid bond which names a principal different from the bidder is deficient and the bid must be rejected as nonresponsive. A.D. Roe Company, Inc., 54 Comp. Gen. 271 (1974), 74-2 C.P.D. ¶ 194, and cases cited therein. The reason for this is the rule of suretyship that no one incurs a liability to pay the debts or perform the duty of another unless he expressly agrees to be bound. See 72 C.J.S. Principal and Surety § 91 (1951); 144 A.L.R. 1263, 1267 (1943). In the present case, the surety's liability under the bond would be contingent upon the bid being submitted by the principal named on the bid bond. A.D. Roe Company, Inc., 54 Comp. Gen. at 274, 74-2 C.P.D. ¶ 194 at 5. Therefore, the rejection of Intex's bid as nonresponsive was proper.

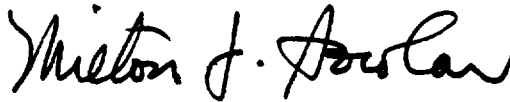
The governmental policy concerning utilization of small business concerns does not negate government requirements for proper bid bonds where such bonds are needed to protect

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the government's interests. Executive-Suite Services Inc., B-212416, May 29, 1984, 84-1 C.P.D. ¶ 577. Intex does not argue that the bid bond was not necessary, but apparently contends that its small business status should permit it to submit bid bonds with another company named as principal. This contention has no merit since this would negate any protection the government would obtain under this bid bond. A.D. Roe Company, Inc., 54 Comp. Gen. at 274, 74-2 C.P.D. ¶ 194 at 5.

Finally, Intex indicates that it has used this method of bidding on past federal projects, including some where it received an award. However, an improper award in one or more prior procurements does not justify repetition of the same error in subsequent procurements. Wright Tool Company, B-212343, Oct. 12, 1983, 83-2 C.P.D. ¶ 457; Giant Lift Equipment Manufacturing Company, Inc., B-213558, May 22, 1984, 84-1 C.P.D. ¶ 542.

In view of the foregoing, the protest is denied.

for 
Comptroller General
of the United States